E-125/C-92-1207; E-125/C-92-1208 ORDER REQUIRING NEGOTIATIONS

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Don Storm	Chair
Tom Burton	Commissioner
Cynthia A. Kitlinski	Commissioner
Dee Knaak	Commissioner
Norma McKanna	Commissioner

In the Matter of the Complaint of Darlene Abraham Against Lyon-Lincoln Electric Cooperative, Inc.	ISSUE DATE: February 18, 1993 DOCKET NO. E-125/C-92-1207
In the Matter of the Complaint of Louis Taveirne Against Lyon-Lincoln Electric Cooperative, Inc.	DOCKET NO. E-125/C-92-1208 ORDER REQUIRING NEGOTIATIONS

PROCEDURAL HISTORY

On October 16, 1992, Darlene Abraham and Louis Taveirne (the Complainants) each filed a complaint with the Commission against Lyon-Lincoln Electric Cooperative, Inc. (Lyon-Lincoln or the Respondent).

On November 6, 1992, Lyon-Lincoln filed a response to each complaint.

On November 16, 1992, the Complainants filed comments regarding Lyon-Lincoln's response to their complaints.

On December 18, 1992, the Minnesota Department of Public Service (the Department) filed comments on the complaints.

On January 19, 1993, the Complainants filed a Reply Memorandum.

On January 29, 1993, Lincoln-Lyon filed a reply to the Complainant's January 19, 1993 filing.

On February 4, 1993, the Commission met to consider these matters.

FINDINGS AND CONCLUSIONS

I. BACKGROUND

The following is the relevant sequence of events based on the parties' filings and clarifications occurring at the February 4, 1993 hearing.[1]

Complainants own wind generators that are qualifying facilities (QFs) as defined in Minn. Rules, Part 7835.0100. The Respondent Lyon-Lincoln Electric Cooperative is a "utility" subject to the Commission's Cogeneration and Small Power Production Rules pursuant to Minn. Rules, Part 7835.0100, subp. 19 (1991).

On June 4, 1992, Respondent received a letter advising it that Complainant Taveirne would interconnect his wind generator with Respondent's utility system on July 14, 1992. The respondent received a similar letter regarding Complainant Abraham's wind generator on June 11, 1992.

On June 18, 1992, Complainant Taveirne submitted a written proposal to the Respondent requesting interconnection as required by Minn. Rules, Part 7835.2900.

On June 24, 1992, Respondent inspected the Complainants' properties with the purpose of determining what facilities would have to be installed to accomplish interconnection with the Complainants' wind generators. Respondent stated that it informed Complainant Taveirne that the interconnection costs could not be calculated until a route for service was selected and the staking sheet prepared.

On June 24, 1992, Respondent sent Complainant Taveirne a proposed standard contract with a cover letter stating that the metering and interconnection costs would be determined later.

On June 29, 1992, Respondent determined the necessary changes to Complainant Abraham's service to interconnect the wind generator.

On July 1, 1992, Respondent's employee met with Complainant Taveirne at the Complainant's properties. According to Respondent, Respondent's employee and Complainant Taveirne agreed on a route for the line and related facilities necessary to interconnect his wind generator. There was no discussion of the costs of these items.

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[1] The parties supplied different dates for various events related here. Those differences are not material to an understanding of the sequence of events. For consistency, the dates attributed to events by the Respondent will be used in this presentation.

Also on July 1, 1992, Respondent received Complainant Abraham's completed written proposal requesting interconnection as required by Minn. Rules, Part 7835.2900.

On July 17, 1992 Respondent's construction crew completed the necessary work for the interconnection of both wind generators to Respondent's system.

On July 20, 1992, Respondent's Board of Directors accepted the Complainants' written proposals for interconnection.

On July 21, 1992, Respondent sent Complainant Abraham the proposed standard contract with a letter stating that the metering and interconnection costs would be determined later.

On July 27, 1992, Respondent installed the detent metering and completed all metering work for both wind generators. As of that date, the physical interconnection of the wind generators to Respondent's system was completed.

On July 27 and 31, 1992, respectively, Respondent sent Complainants Taveirne and Abraham statements requesting payment of interconnection costs in the amounts of $3,797.86 and $2,804.26 respectively.

On September 17, 1992, Respondent informed the Complainants by letter that the payments due them for the electricity supplied to Respondent's system would be withheld until they paid the interconnection costs.

The Complainants have not paid the amounts charged them as interconnection costs and filed their complaints on October 16, 1992.

II. THE COMPLAINANTS' REQUESTS FOR RELIEF

A. Initial Complaints

In their October 16, 1992 Complaints, Complainants alleged that charges levied against them by Lyon-Lincoln as "interconnection costs" were not truly interconnection costs and were not incurred by Lyon-Lincoln as a result of installing and maintaining their QFs. The Complainants asserted that Lyon-Lincoln imposed these charges in violation of Minn. Rules, Parts 7835.6100 and 7835.9910 because, according to the Complainants, these rules require that interconnection costs be estimated prior to entering into a standard contract. Finally, the Complainants asserted that the "interconnection" charges are discriminatory and in excess of what is imposed upon other customers with similar load characteristics or upon customers of the same class of service to which the Complainant would belong if they were not the owners of qualifying facilities.

B. Respondent's Answer

In its November 6, 1992 Answer, Lyon-Lincoln denied the Complainants' contention that the costs in question were capacity rather than interconnection costs. Respondent Lyon-Lincoln stated however, that the amounts charged to the Complainants were incorrect because it had miscalculated the transformer cost. Lyon-Lincoln reduced the charges to Complainant Abraham by $851.26 (from $2,804.26 to $1,953) and reduced the charges to Complainant Taveirne by $1,315.86 (from $3,797.86 to $ $2,482).

In their Comments filed November 16, 1992, Complainants claimed that Respondent's Answer, by acknowledging that the installed facilities were used to provide service to several customers, established that the costs in question were capacity costs. The Complainants argued that the existing transformer was inadequate to serve those customers and that the interconnection was merely a pretext for upgrading the service to those customers. Complainants asserted that by Commission rule a utility may only require a separate distribution transformer

> ...if necessary either to protect the safety of employees or the public or to keep service to other customers within prescribed limits. Minn. Rules, Part 7835.5000 (1991).

In support of their claim of discrimination, the Complainants also alleged that Respondent has interconnected with several QFs whose wind generators are similar in design characteristics and output ratings to Complainants' generators without charging for transformers or overhead lines. Complainants also argued that since the utility does not recover the cost of transformers and overhead wires from its other customers with similar load characteristics, it may not recover those costs from a QF owner. The Complainants further argued that even if the costs could be assigned to the Complainants, the charges for the transformer were out of line with prevailing market prices and, as such, were unreasonable and should be struck in their entirety.

Finally, the Complainants argued that the Respondent's attempt to have the Complainants sign a contract before it had inserted the amount it claimed for interconnection violated Minn. Rules, Parts 7835.6100 and 7835.9910. Complainants requested that the Commission order the Respondent to include the costs of interconnection on the standard contract that the Respondent submits to a QF owner.

C. The Department's Report and Recommendations

On December 18, 1992, the Department filed its comments regarding these complaints. The Department stated that the primary issue was whether the costs of the two transformers and the related wiring installed by the Respondent were recoverable as

interconnection costs. The Department cited the definition of interconnection costs [Minn. Rules, Part 7835.0100, subp. 12 (1991)] and interpreted that term to include all the costs that the utility incurs to connect QFs. As to the transformer costs, the Department stated that its investigation showed that with the addition of the QFs these additional transformers were needed to maintain service to other affected customers within prescribed limits. Regarding the wiring upgrade from old 100 amp loops to 200 amp loops, the Department found that interconnection with the QFs required this upgrade because the 145.8 amp rating for each of the QF generators was greater than the capacity of the old loops. From this, the Department concluded that all reasonable expenses for the transformers and the upgraded wiring were appropriately recoverable as interconnection costs.

For the Department, the sole remaining issue was to determine a reasonable amount for those expenses. The Department concluded, on the basis of invoices and work orders supplied by the Respondent that the costs claimed by the Respondent were reasonable.

The Department recommended that the Commission 1) allow the Respondent to recover $2,482 interconnection costs for the Taveirne QF and $1,953 from the Abraham QF and 2) require the Respondent to pay for the energy generated and delivered to its system from the Complainants' wind generators upon payment of those costs. Finally, the Department stated that in the future, the Respondent should specify interconnection costs on the QF's standard contract to eliminate future misunderstandings.

D. Complainants' Reply Memorandum

In its January 19, 1993 Reply Memorandum, Complainants stated that the Department had ignored the gravamen of the Complaints, i.e. that the Respondent, which had interconnected other wind generators under the same or similar circumstances without charging for the cost of an upgraded transformer and loop, failed to apprise them, before Complainant's installed their wind generators, that these costs for an upgraded transformer and loop would be necessary. According to Complainants, the fact that these charges may have been reasonable and necessary does not justify the utility's failure to tell the Complainants before the Complainants constructed and interconnected their wind generators what those costs would be. According to Complainants, Minn. Rules, Parts 7835.2900 and 7835.9100 impose a duty on the utility to provide a QF with advance notice of interconnection charges likely to be assessed. Such notification would enable the QF to decide whether to amend (or even withdraw) its plan of interconnection, or decide to install its own equipment to meet the utility's interconnection requirements. The Complainants asserted that assessing them for costs which the utility gratuitously incurred without their agreement was discrimination.

Complainants asserted that they were at least entitled to a contested case hearing on its contention that the Respondent merely used the occasion of the Complainants' request for interconnection to bring substandard loops up to standard on its system. Complainants argued that if their contention is true, they are being discriminated against as QFs. A contested case is required, according to Complainants, because the Respondent had not shown that it treated Complainants the same as it would treat any other QF or any other customer in the same rate classification.

Finally, Complainants argued that the Respondent discriminated against them as QFs when it required them to pay for equipment and installation services from the utility rather than allowing the Complainants to furnish and install their own protective and control apparatus. As a remedy for that discrimination, the Commission should only allow the Respondent to collect from Complainants the amount that the Complainants would have paid to purchase and install the transformers and upgraded loops themselves. In addition, since the Complainants would have owned the transformers and loops if they had been allowed to purchase these items and install them, the Commission should also order the utility convey legal title to these items to the Complainants.

E. Respondent's Reply Memorandum

On January 29, 1993, the Respondent filed its Reply Memorandum. The Respondent requested that the Commission order the Complainants to pay the interconnection costs submitted to them and dismiss their Complaints.

The Respondent denied that there was a thirty day period of interconnection after which it was unlawful and discriminatory to impose interconnection charges. Respondent argued that there were sound reasons why it submitted its statement for interconnection charges to the Complainants on July 31, 1992, four days after the physical interconnection to its system. Respondent stated that it was unable to estimate the interconnection costs as it had done for previous wind generators, because, in addition to the usual metering, the service at Complainants' locations had to be changed from 100 to 200 amps and separate transformers of 37.5 KVA capacity had to be provided for each generator. Respondent explained that it could not estimate these costs with any accuracy until Complainants made decisions as to the location and type of service lines to be constructed. Respondent stated that, as a consequence, it informed Complainants in the June 24, 1992 letters accompanying the proposed contracts that it would determine the metering and interconnection costs later.

Respondent argued that Complainants were estopped from challenging these costs because they showed no concern during the sequence of events for the manner in which the interconnection costs would be determined and charged. Respondents asserted that it would be unjust enrichment for Complainants to escape their plain financial obligations to pay these costs.

Respondent also disagreed that Complainants had a right to purchase and install their own facilities necessary for interconnected operations. Respondent stated that, like all utilities, it does not permit its customers to purchase, install and maintain their own transformers or build their own power lines. Respondent argued that it cannot treat QFs any differently than other members of the residential class. Respondent indicated that Complainants' suggestion that utilities must convey legal title to such facilities was unprecedented.

III. COMMISSION ANALYSIS

QFs are responsible for the actual, reasonable costs of interconnection. The principal questions raised in the matter are A) whether the costs in question are interconnection costs, B) whether they are reasonable, and C) whether imposition of such costs against the Complainants is discriminatory.

A. Interconnection Costs and Capacity Costs

The costs assessed by Respondent against the Complainants were for 1) metering, 2) transformers, and 3) wiring. Complainants acknowledged that the metering costs are proper interconnection costs that they should pay for but contended that the costs incurred to install the transformers and to upgrade the wiring were capacity costs.

A potential for confusion in addressing Complainants' argument is that the two terms (interconnection costs and capacity costs) are not mutually exclusive. Interconnection costs are, in fact, a subcategory of capacity costs. Some costs may be both capacity costs and interconnection costs. An analysis, therefore, that shows that a cost is a capacity cost does not prove that it is not an interconnection cost. A close look at the definitions makes this clear.

Minn. Rules, Part 7835.0100, subp. 4 defines "capacity costs" broadly as

> the costs associated with providing the capability to deliver energy. They consist of the capital costs of facilities used to generate, transmit, and distribute electricity and the fixed operating and maintenance costs of these facilities.

Minn. Rules, Part 7835.0100, subp. 12 on the other hand, defines "interconnection costs" as

> the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the utility that are directly related to installing and maintaining the physical facilities necessary to permit interconnected operations with a qualifying facility..... (Emphasis added.)

What costs are thus "directly related" to the QF's operation? In the Order adopting rules governing QFs, the Commission stated that the need to define "interconnection costs" was to identify the

> costs which would not be incurred if the utility did not engage in the interconnected operations with cogenerators and small power producers. In the Matter of the Proposed Adoption of Rules Governing Cogeneration and Small Power Producers, Docket No. E-999/R-80-560, ORDER ADOPTING RULES (March 7, 1983).

In other words, the Commission uses a strict "but for" analysis to determine whether a cost may be properly viewed as an interconnection cost. If a cost is incurred as a result of the QF's request for interconnection, it is an interconnection cost. In this case, Respondent's previous 10 KVA transformer and the 100 amp wiring were inadequate to handle Complainants' electricity flow without jeopardizing service to other affected customers and, therefore, the wiring had to be replaced by 200 amp wiring and two additional 37.5 KVA transformers had to be installed. Accordingly, costs for these items are properly classified as "interconnection costs".

B. Reasonableness of the Costs Incurred in Interconnection

In order to be an "interconnection cost" as defined in Minn. Rules, Part 7835.0100, subp. 12, the cost in question must be "reasonable." The Commission finds that there is insufficient support in the record at this time to make a determination that the costs assessed for the items in question (transformers and loop wire) are reasonable. On complaint, the burden of proof is on the utility. Minn. Rules, Part 7835.4500. The only evidence provided by the Respondent in support of the reasonableness of these costs were the invoices and work orders related to these items. There was no indication of the market rate for the items other than Complainants' assertion that it could purchase comparable transformers at a significantly lower price.

C. Discriminatory Costs Prohibited

Minnesota statutes prohibit utilities from discriminating against any of their customers. Minn. Stat. § 216B.03 (1992) states in pertinent part:

> Rates [defined in Minn. Stat. § 216B.02, subd. 5 to include any charge demanded by a utility for any service] shall not ...be unreasonably prejudicial or discriminatory, but shall be...equitable and consistent in application to a class of consumers. (Emphasis added.)

Complainants alleged that the Respondents have discriminated against them in several respects. First, in comparison with other QFs, Complainants argued that the Respondent treated them differently in requiring them to pay for the installation of transformers and loop wire where it had only required other QFs to pay for detent meters. However, the circumstances of Complainants' QFs were quite different from those of the other QFs. The other QFs were interconnected in a context of existing facilities (wiring and transformers) that were adequate to handle anticipated power flows in either direction. Consequently, the only facilities that Respondent had to install as a result of these earlier interconnection requests was metering. Complainant's generators, by contrast, were of such a size in the context of the existing facilities (10 KVA transformer and 100 amp loop) that Respondent had to upgrade to 200 amp loop and install a 37.5 KVA transformer for each of Complainants' generators. Because of the significant difference in their circumstances, it is not possible to find that Complainants were discriminated against in this regard.

Second, Complainants asserted that Respondent treated them differently in comparison to Respondent's other residential customers. Complainants stated that since Respondent did not charge all residential customers for the transformer and loop wire used in connection with their service, it was discriminatory to charge Complainants for these items. This argument is a restatement of the argument that the costs of installing the transformers and upgraded loop wire were capacity costs. As found previously, the transformers and loop wire were required in response to Complainants' requests for interconnection. As a consequence, these costs are properly viewed as Complainant's interconnection costs and no discrimination has occurred in that respect.

Third, Complainants alleged that in failing to apprise them of the amount of interconnection costs that it would impose prior to incurring those costs, Respondent treated them differently than the other QFs and, hence, discriminated against Complainants. However, Respondent explained that its delay in formulating the cost estimates and getting them to Complainants was due to a

number of reasons: that Complainants' interconnections involved more costs than were involved in the previous interconnections and during at least part of the time that it needed additional information from Complainants. In addition, Complainants never objected to the prospect of receiving the cost information at a later date and bear some responsibility for failing to clarify the amount of costs involved before they were incurred. In these circumstances, the Commission cannot find that the Respondent's action, while it may have differed from what it did in the cases of the previous QFs, was unreasonably discriminatory within the meaning of Minn. Stat. § 216B.03 (1992).

Fourth, Complainants asserted that pursuant to Minn. Rules, Part 7835.2200 they had the right to install any or all of the equipment necessary to effect the interconnection. Complainants alleged that the Respondent discriminated against them as QFs when, in violation of that right it required Complainants to pay for equipment and installation services from the utility rather than allowing the Complainants to furnish and install their own protective and control apparatus. Though it is unclear what class of customer Complainant is using as a basis for comparison, the discrimination charge can not hold because it is not the Respondent's practice to allow either QFs or residential customers to install any equipment used as part of the Respondent's system. Clearly Respondent has not treated Complainants differently from either group. In the context of a discrimination complaint, therefore, it is unnecessary to address the merits of the Complainant's initial premise regarding Complainant's rights under Minn. Rules, Part 7835.2200.

D. Absence of a Written Contract

Minn. Rules, Part 7835.2000 states:

> A written contract must be executed between the qualifying facility and the utility.

Minn. Rules, Part 7835.6100 requires that the parties' contract be as prescribed in Minn. Rules, Part 7835.9910. An essential part of that contract, as prescribed in Minn. Rules, Part 7835.9910 is a provision which recites the estimated amount of interconnection costs that the QF will be responsible to pay and the way (means and timing) that the QF will pay those costs. These rules require that such a complete contract be signed before the utility incurs interconnection expenses.

The Respondent and Complainants proceeded in violation of those rules. There was no signed contract between the parties as is required by Minn. Rules, Part 7835.2000 before the interconnection costs were incurred and there continues to be no signed contract to date. The Respondent prepared and attempted to secure the signing of a document that, because it lacked the

interconnection cost estimate, was incomplete. The Complainants made no further effort to secure a completed contract prior to Respondent's incurring interconnection costs.

Despite the non-existence of a contract covering a major portion of the relationship between the parties, the Respondent proceeded and the Complainants allowed the Respondent to proceed with the interconnection. Both parties have incurred substantial expenditures and changed their positions substantially. Complainants have purchased and installed wind generators and the Respondents have installed two transformers and upgraded the loop wire.

The Commission notes that the predicament that both parties find themselves in is precisely what the Commission sought to avoid in requiring the timely signing of a complete contract.

E. Request for Contested Case Hearing

Minn. Stat. § 216B.17, subd. 8 (1992) states that the Commission shall order that a contested case proceeding be conducted under chapter 14

> If, after making an investigation under subdivision 1 and holding a hearing under this section, the commission finds that all significant factual issues raised have not been resolved to its satisfaction:

Complainants asserted that they are entitled to a contested case hearing regarding their contention that the Respondent has used the occasion of the Complainants interconnecting their QFs to its system to conform substandard facilities (transformer and loops) to standard on its system. Respondent has strongly denied this allegation and nothing in the record lends any credence to Complainants' assertion. On the contrary, the timing of Respondent's upgrade activity supported by documentation between the parties indicates that the Respondent undertook the facilities upgrade in response to Complainants' request for interconnection and that this activity went no further than what was required to accommodate the interconnected facilities. Accordingly, the Commission finds that the factual issue in question has been resolved to its satisfaction and that no contested case proceeding is warranted.

IV. COMMISSION ACTION

In these circumstances, the Commission will reject the Respondent's request that it order the Complainants to pay the amount of costs that it has assessed against the Complainants. At the same time, the Commission is not inclined to relieve the Complainants of the entire assessment, as they request. The reasonable costs of interconnecting QFs with the utility's system

are the responsibility of the QF. The Commission has found that the facilities installed (two 37.5 KVA transformers, upgraded loop wire, and the meters) were required for interconnection and that imposition of some level of costs for those items does not discriminate against the Complainants.

The question of what level of costs may be appropriately assessed against the Complainants, however, remains open. First, the Commission is aware that if the Respondent had complied with the contract rule and provided the Complainants with a reasonable estimate of the interconnection costs it would assess, the Complainants would have had several options: e.g. to propose alternate or less expensive interconnection measures, to propose that they or some third party install some or all of the agreed equipment, to seek Commission resolution of any unresolved dispute between the parties regarding these arrangements, and to abandon the project at that point without having incurred the expense of purchasing the wind generators.[2] Even if the parties had agreed that the required interconnection facilities would be installed by the Respondent, it is not clear that they would have agreed that the prices for these items proposed by the Respondent were reasonable given the market for these items.[3]

Given these considerations and since there is no contract between the parties, the Commission will direct the parties to negotiate towards a contract, including payment by the Complainants of a reasonable amount for the required interconnection items. Note that the Commission is not ordering the parties to do business

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[2] Minn. Rules, Part 7835.4800 provides that the utility must be permitted to include in the contract reasonable technical connection and operating specifications for the QF. Any installation of required interconnection facilities by the Complainants, of course, would have had to meet the requirements of the National Electrical Safety Code as required by Minn. Rules, Part 7835.2100. Note that the Commission is not finding in this Order that the Complainants had such a right. Given the posture of the case and the fact that the facilities in question have already been installed, the question is moot.

[3] In fact, Respondent acknowledged that the parties would not have agreed and that the Complainants would have filed a complaint to resolve the dispute. "Ironically, if the Cooperative had informed Complainants then of the estimated interconnection costs as eventually charged, and had not proceeded with the construction until they were paid, the Complainants would have filed a Complaint..., because they disagreed with the amount of these costs." Respondent's Reply Memorandum, page 3. The fact is that this sequence of events is what the rules envision and would have been much preferable, potentially saving both parties time and expense.

with each other; the parties may choose to have no further dealings with each other. However, the requirement of Minn. Rules, Part 7835.1900 requiring the utilities to purchase energy and capacity from any QF which offers to sell energy to the utility and agrees to the conditions prescribed in the Commission's rules still applies. The parties must operate however, pursuant to a written contract.

The major outstanding contract issues for negotiation are the amount Complainants will pay the Respondent for installing the required facilities and the way (manner and timing) the Complainants will pay Respondent the amount agreed upon. The amount must be reasonable in light of the prevailing market for the appropriate facilities. In the event of impasse in the negotiations between them, of course, either party may request the Commission to determine the issue pursuant to Minn. Rules, Part 7835.4500.

ORDER

1. The Respondent Lyon-Lincoln Electric Cooperative and the Complainants Louis Taveirne and Darlene Abraham shall negotiate towards formation of a written contract to resolve two particular issues: the amount Complainants will pay the Respondent for installing the required facilities and the way (manner and timing) the Complainants will pay Respondent the amount agreed upon.

2. In the event that the Respondent and Complainants are able to agree on these issues, they shall execute a contract pursuant to Minn. Rules, Parts 7835.200, 7835.6100, and 7835.9910 and file a copy of that contract with the Commission.

3. In the event of impasse in the negotiations between them, either party may request the Commission to determine the issue pursuant to Minn. Rules, Part 7835.4500.

4. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Richard R. Lancaster
Executive Secretary

(S E A L)